

## **Board of Contract Appeals**

General Services Administration  
Washington, D.C. 20405

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April 22, 2003

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GSBCA 16035-TRAV, 16036-TRAV, 16037-TRAV

In the Matters of JERRY B. DULWORTH, GARY WORRELL, and  
KENNETH A. McELROY

Jerry B. Dulworth, Smyrna, TN, Claimant in GSBCA 16035-TRAV.

Gary Worrell, Smyrna, TN, Claimant in GSBCA 16036-TRAV.

Kenneth A. McElroy, Smyrna, TN, Claimant in GSBCA 16037-TRAV.

John R. Keneipp, Deputy Director, Travel Systems and Procedures, Defense Finance and Accounting Service, Indianapolis Center, Indianapolis, IN, appearing for Department of Defense.

**GOODMAN**, Board Judge.

Claimants are employees of the Tennessee Army National Guard at Smyrna, Tennessee. The agency has requested an opinion pursuant to 31 U.S.C. § 3529 (2000) with regard to reimbursement of their lodging and per diem expenses.

### Factual Background

The claimants' original temporary duty (TDY) orders authorized five days of travel, listing Brownsville, Tennessee, and Winchester, Tennessee, as the TDY locations. The official mileage from Smyrna to the TDY locations is 174 miles and 72 miles, respectively. The purpose of the TDY was to transport two scrapers. The mission actually consisted of two separate round-trips to retrieve heavy equipment. Each round trip began and ended at the PDS (permanent duty station).

The original schedule was for a five day mission with two nights away from the PDS. Instead, the claimants made the entire round trip to Brownsville on the first day, arriving back at the PDS late in the evening of July 30, 2002, after traveling more than twelve hours. Because two of the claimants, Mr. Dulworth and Mr. Worrell, live over seventy-five miles from the PDS, they elected to secure lodging in Smyrna, the location of their PDS, in order to depart early the next morning for the second trip.

With regard to the first day of travel, Messrs. Dulworth and Worrell are seeking reimbursement of lodging secured in the vicinity of their permanent duty station (PDS) in conjunction with temporary duty (TDY) and all three of the claimants are requesting payment of per diem. The agency found no provision to permit payment of the lodging, and recommends payment of 75% of the meals and incidental expenses (M&IE) allowance for the first day.

The agency states:

Although their intentions were in the best interest of the government, per diem is not permitted at the permanent duty station in accordance with the Joint Travel Regulations par. C4522-C . . . . In this case, however, since the length of the travel was over 12 hours, this office is unclear whether or not they may be reimbursed for lodging secured at the PDS. Reimbursement of the M&IE portion would be limited to 75% of the TDY location M&IE rate in accordance with the Joint Travel Regulations (JTR) par. C4353-D.1.a.

The agency determined that no per diem is payable for the second day of travel, since the claimants began and ended their day at their PDS and travel was performed in less than twelve hours.

#### Discussion

The agency correctly determined the reimbursement under the circumstances described.

As the first day of travel originated and ended at the PDS, claimants are not entitled to lodging. By statute, a per diem allowance is authorized for Government employees "when traveling on official business away from the employee's designated post of duty, or away from the employee's home." 5 U.S.C. § 5702 (2000). In pertinent part, the Federal Travel Regulation (FTR), which implements this statute, provides that an employee is eligible for a per diem allowance when the employee "perform(s) official travel away from [his or her] official station, . . . incur(s) per diem expenses while performing official travel; and [is] in a travel status for more than 12 hours." 41 CFR 301-11.1 (2002). The phrase "official station" is defined as "the location of the employee's . . . permanent work assignment." 41 CFR 300-3.1.

Per diem allowance is defined as follows:

The per diem allowance (also referred to as subsistence allowance) is a daily payment instead of reimbursement for actual expenses for lodging (excluding taxes), meals, and related incidental expenses. The per diem allowance is separate from transportation expenses and other miscellaneous expenses. The per diem allowance covers all charges, including any service charges where applicable for: (a) Lodging . . . (b) Meals . . . (c) Incidental expenses.

41 CFR 300-3.1.

After returning to their official duty station at the conclusion of more than twelve hours of official travel, claimants incurred lodging expenses rather than returning to their homes which were located more than seventy-five miles from their official station. The lodging expenses are components of the per diem allowance, which is only payable when an employee is traveling away from his official duty station.<sup>1</sup> Lodging expenses may therefore not be reimbursed when the employee stays at his official duty station. This is true regardless of any unusual working conditions involved or adverse weather conditions. Murray Lumpkin, GSBCA 14513-TRAV, 98-2 BCA ¶ 30,042; Herman T. Whitworth, GSBCA TRAV-14401, 98-2 BCA ¶ 29,804.

For M&IE, an employee on TDY is entitled to receive an allowance when he travels more than twelve hours on any day, even if the day of travel does not require lodging. The allowance is 75% of the applicable M&IE rate for the TDY site. 41 CFR 301.11.101-11.102. The agency properly calculated the M&IE allowance for these employees on the day they were in travel status for more than twelve hours. The agency also properly denied any allowance for the day on which the employees were in travel status for less than twelve hours, since no allowance is provided for such a day.

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ALLAN H. GOODMAN  
Board Judge

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<sup>1</sup>Before the FTR was extensively revised, it contained the following section, which made it very clear that those who are not on official travel cannot receive a per diem allowance:

- (a) No allowance at official station. A per diem allowance shall not be allowed within the limits of the official station . . . or at, or within the vicinity of, the place of abode (home) from which the employee commutes daily to the official station.